

identified in paragraph 10.2 of Section 10 (Controlled Unclassified Information). The PSI and CG will be developed by the POs within three months after the PA enters into effect. They will be reviewed and forwarded to the PA Participants' DSAs for approval, and will be applicable to all government and Contractor personnel participating in the PA. The CG will be subject to regular review and revision with the aim of downgrading the classification whenever this is appropriate. The PSI and the CG will be approved by the appropriate DSA prior to the transfer of any Classified Information.

12.7. Contractors, prospective Contractors, or subcontractors which are determined by DSAs to be under financial, administrative, policy or management control of nationals or entities of a Third Party, may participate in a Contract or subcontract requiring access to Classified Information provided or generated pursuant to a PA under this MOU only when enforceable measures are in effect to ensure that nationals or entities of a Third Party will not have access to Classified Information. If enforceable measures are not in effect to preclude access by nationals or other entities of a Third Party, the other PA Participant will be consulted for written approval prior to permitting such access.

12.8. For any facility wherein Classified Information is to be used, the responsible PA Participant or Contractor will approve the appointment of a person or persons to exercise effectively the responsibilities for safeguarding at such facility the Information pertaining to the applicable PA. These officials will be responsible for limiting access to Classified Information involved in the PA to those persons who have been properly approved for access and have a need-to-know.

12.9. Information provided or generated pursuant to paragraph 3.1 of Section 3 (Scope of Work) of this MOU will take place at the unclassified level. Subject to the national disclosure policies of the Participants to a PA, Information provided or generated pursuant to a PA may, on a case-by-case basis, be classified as high as SECRET. Each PA Participant will ensure that access to Classified Information is limited to those persons who possess requisite security clearances and have a specific need for access to the Classified Information in order to participate in a PA.

12.10. The existence of this MOU is UNCLASSIFIED and the contents are UNCLASSIFIED. The classification of the existence

of any PA and its contents will be stated in that PA.

SECTION 13

THIRD PARTY SALES AND TRANSFERS

PROVISIONS APPLICABLE TO INFORMATION EXCHANGED OR DEVELOPED PURSUANT TO PARAGRAPH 3.1 OF SECTION 3 (SCOPE OF WORK)

13.1. The Third Party sales and transfer provisions that govern the Information exchange activities described in paragraph 3.1 of Section 3 (Scope of Work), except for the jointly-developed reports described therein, are as follows:

- 13.1.1. A Participant will not sell, transfer title to, transfer possession of, or otherwise disclose Information received through the exchange activities described in paragraph 3.1 of Section 3 (Scope of Work) of this MOU to any Third Party without the prior written consent of the providing Participant.
- 13.1.2. The providing Participant will be solely responsible for authorizing any such sale, transfer, or disclosure, and specifying the method and conditions for implementing any such sale, transfer, or disclosure.

13.2. The Participants will not sell, transfer title to, disclose, or transfer possession of reports developed pursuant to paragraph 3.1 of Section 3 (Scope of Work) of this MOU to any Third Party without the prior written consent of the other Participants. Furthermore, no Participant will permit any such sale, disclosure, or transfer without the prior written consent of the other Participants' governments. Such consent will not be given unless the government of the intended recipient consents in writing with the Participants that it will:

- 13.2.1. not retransfer, or permit the further retransfer of, any Information provided; and
- 13.2.2. use, or permit the use of, the Information provided only for the purposes specified by the Participants.

PROVISIONS APPLICABLE TO PAs

13.3. Except to the extent permitted in paragraph 13.4, PA Participants will not sell, transfer title to, disclose, or

transfer possession of Foreground Information, jointly acquired Project Equipment, or any item produced either wholly or in part from Foreground Information to any Third Party without the prior written consent of the other PA Participants' governments. Furthermore, no PA Participant will permit any such sale, disclosure, or transfer, including by the owner of the item, without the prior written consent of the other PA Participants' governments. Such consent will not be given, unless the government of the intended recipient consents in writing with the PA Participants that it will:

13.3.1. not retransfer, or permit the further retransfer of, any such Project Equipment, item, or Information provided; and

13.3.2. use, or permit the use of, such Project Equipment, item, or Information provided only for the purposes specified by the PA Participants.

13.4. Each PA Participant will retain the right to sell, transfer title to, disclose, or transfer possession of Foreground Information:

13.4.1. which is generated solely by either that PA Participant or that PA Participant's Contractors in the performance of that PA Participant's work allocation under Section 3 (Scope of Work) or a PA; and

13.4.2. which does not include any Foreground Information or Background Information of another PA Participant, and whose generation, test, or evaluation has not relied on the use of Project Equipment of another PA Participant.

13.5. In the event questions arise as to whether the Foreground Information (or any item produced either wholly or in part from the Foreground Information) that a PA Participant intends to sell, transfer title to, disclose, or transfer possession of to a Third Party is within the scope of paragraph 13.4, the matter will be brought to the immediate attention of the other PA Participants. The PA Participants will resolve the matter prior to any sale or other transfer of such Foreground Information (or any item produced either wholly or in part from the Foreground Information) to a Third Party.

13.6. A PA Participant will not sell, transfer title to, disclose, or transfer possession of Project Equipment or Background Information provided by another PA Participant to any Third Party without the prior written consent of the government of the PA Participant which provided such equipment or Information. The providing PA Participant will be solely responsible for authorizing such transfers and, as applicable, specifying the method and provisions for implementing such transfers. For Project Equipment or Background Information that has been provided by a furnishing PA Participant to a receiving PA Participant, the Participants recognize that any sale, transfer of title to, disclosure of, or transfer of possession of such Project Equipment or Background Information by the receiving PA Participant to any non-Third Party will be in accordance with the applicable provisions of this MOU, including Section 7 (Contracting Provisions), Section 8 (Project Equipment), and Section 9 (Disclosure and Use of Information).

SECTION 14

LIABILITY AND CLAIMS

14.1. Claims arising from activities conducted under this MOU or its PAs will be dealt with in accordance with any applicable multilateral or bilateral treaties, agreements or arrangements between the Participants concerned.

14.2. Where no applicable multilateral or bilateral treaties, agreements or arrangements exist between the Participants concerned, the following provisions will apply:

14.2.1. With the exception of claims for damage or loss to Project Equipment pursuant to Section 8 (Project Equipment), each Participant waives all claims against the other Participants for injury or death of its personnel and for damage to or loss of its property arising from the performance of official duties. However, if the Participants mutually determine that the damage, loss, injury or death is caused by reckless acts, reckless omissions, willful misconduct, or gross negligence, the cost of any claim will be borne entirely by the responsible Participant(s).

14.2.2. Claims from any third parties for damage, loss, injury, or death will be processed by the most appropriate Participant, as mutually determined by the Participants. Where there is a PA, any costs determined to be owed the claimant will be borne by the PA Participants in the same ratio as they share the Financial and Non-Financial Costs under the PA, or if there is no applicable PA, the costs will be shared as mutually determined between the Participants concerned. However, if the Participants mutually determine that the damage, loss, injury or death is caused by reckless acts, reckless omissions, willful misconduct, or gross negligence, the cost of any claim will be borne entirely by the responsible Participant(s).

14.2.3. Claims arising under any Contract awarded under a PA will be resolved in accordance with the provisions of the Contract. The Contracting PA Participant will not indemnify Contractors

against third party liability claims, unless otherwise mutually determined in the PA. The PA Participants will share any costs of such Contract claims as follows:

- 14.2.3.1. Consistent with paragraph 7.2 of Section 7 (Contracting Provisions), for Contracts where one PA Participant contracts solely on its own behalf, the PA Participant awarding the Contract will pay the cost of claims arising under such Contracts.
- 14.2.3.2. For Contracts where one PA Participant contracts on behalf of one or more of the other PA Participants, the PA Participant(s) on whose behalf the Contract was awarded will pay the cost of claims arising under such Contracts.
- 14.2.3.3. For Contracts awarded on behalf of the Contracting PA Participant and one or more of the other PA Participants, the cost of claims under such Contracts will be shared in the same ratio as they share the Financial and Non-Financial Costs under that PA.

SECTION 15

PARTICIPATION OF ADDITIONAL NATIONS

15.1. It is recognized that other national defense organizations may wish to join this MOU and its PAs..

15.2. Mutual consent of the Participants will be required to conduct discussions with potential additional participants. The Participants will discuss the arrangements under which another participant might join, including the furnishing of releasable Project Information for evaluation prior to joining. If the disclosure of Project Information is necessary to conduct discussions, such disclosure will be in accordance with Section 9 (Disclosure and Use of Information), Section 10 (Controlled Unclassified Information), Section 12 (Security) and Section 13 (Third Party Sales and Transfers).

15.3. No potential additional participants may join in an existing PA without joining the MOU. If an MOU Participant wishes to become an additional PA Participant in a specific PA, mutual consent of the PA Participants will be required to conduct discussions with that MOU Participant, to include the furnishing of releasable Project Information for evaluation prior to joining. If the disclosure of Project Information is necessary to conduct discussions, such disclosure will be in accordance with Section 9 (Disclosure and Use of Information), Section 10 (Controlled Unclassified Information), Section 12 (Security) and Section 13 (Third Party Sales and Transfers) of this MOU and corresponding PA provisions.

15.4. The Participants will jointly formulate the provisions under which additional participants might join. The addition of new participants to the MOU will require amendment of this MOU by the Participants. The addition of a PA Participant to a PA will require amendment of that PA by the PA Participants.

SECTION 16

CUSTOMS DUTIES, TAXES, AND SIMILAR CHARGES

16.1. Customs duties, import and export taxes, and similar charges will be administered in accordance with each Participant's respective laws and regulations. Insofar as existing national laws and regulations permit, the Participants will endeavor to ensure that such readily identifiable duties, taxes and similar charges, as well as quantitative or other restrictions on imports and exports, are not imposed in connection with work carried out under this MOU or applicable PAs.

16.2. Each Participant will use its best efforts to ensure that customs duties, import and export taxes, and similar charges are administered in a manner favorable to the efficient and economical conduct of the work. If any such duties, taxes, or similar charges are levied, the Participant in whose country they are levied will bear such costs.

16.3. If, in order to apply European Union (EU) regulations, it is necessary to levy duties, then these will be met by the EU member end recipient. To this end, parts of the components of the equipment coming from outside the EU will proceed to their final destination accompanied by the relevant customs document enabling settlement of duties to take place. The duties will be levied as a cost over and above the EU member end recipient Participant's shared cost the applicable PA.

SECTION 17

SETTLEMENT OF DISPUTES

17.1. Disputes between or among the Participants arising under or relating to this MOU and its PAs will be resolved only by consultation between or among the Participants and will not be referred to a national court, an international tribunal, or to any other person or entity for settlement.

SECTION 18

LANGUAGE

18.1. The working language for this MOU will be the English language.

18.2. All data and Information exchanged or generated under this MOU and its PAs, and any Contract under a PA and provided by one Participant to the other Participants will be furnished in the English language.

SECTION 19

GENERAL PROVISION

19.1. All activities of the Participants under this MOU and any PAs will be carried out in accordance with their respective national laws and regulations, including their applicable export control laws and regulations. The responsibilities of the Participants will be subject to the availability of funds for such purposes.

SECTION 20

AMENDMENT, TERMINATION, ENTRY INTO EFFECT, AND DURATION

20.1. In the event of a conflict between a Section of this MOU and the Annex to this MOU, the MOU Section will prevail.

20.2. Except as otherwise provided, this MOU and its Annex may be amended by the mutual written consent of all of the Participants. Any PA under this MOU may be amended by the mutual written consent of all of its Participants.

20.3. This MOU may be terminated at any time upon the mutual written consent of all of the Participants. In the event the Participants mutually consent to terminate this MOU, the Participants will consult prior to the date of termination to ensure termination on the most economical and equitable provisions. In the event of MOU termination or expiration, all PAs will be automatically terminated unless, prior to the termination or expiration of this MOU, the PA Participants of a PA mutually consent to, and implement, the conversion by amendment of that PA into a stand-alone MOU.

~~20.4. An individual PA may be terminated at any time upon the written consent of all the PA Participants. In the event the PA Participants consent to terminate a PA, the PA Participants will consult prior to the date of termination to ensure termination on the most economical and equitable provisions.~~

20.5. In the event that the MOU or any of its PAs is terminated the following will apply:

20.5.1. The Participants will continue participation financial or otherwise, up to the effective date of termination.

20.5.2. Except as to Contracts awarded on behalf of other PA Participants, each PA Participant will be responsible for its own costs associated with termination. For Contracts awarded on behalf of other PA Participants, such PA Participants will pay all costs associated with termination in accordance with the cost sharing arrangements in the relevant PA. However, a PA Participant's total financial and non-financial contribution, including Contract termination costs, will not

exceed that PA Participant's financial and non-financial contributions as established in the PA.

20.5.3. All Information, Project Information, and rights therein received under the provisions of this MOU and its PAs prior to the termination will be retained by the Participants, subject to the provisions of this MOU and any applicable PA.

20.5.4. Each PA Participant will make available to the other PA Participants all Foreground Information generated and delivered prior to termination, and which has not been provided to the other PA Participants prior to termination.

20.6. Any Participant may withdraw from this MOU upon 120 days written notification to the other Participants. Such withdrawal will automatically result in the former MOU Participant's withdrawal from all PAs to which it is a signatory. A PA Participant may choose to withdraw from a PA without withdrawing from this MOU; withdrawal from a PA is subject to 120 days written notice to the other PA Participants. Notice of withdrawal from either the MOU or its PAs will be the subject of immediate consultation by the HISC (in the case of the MOU) or PSC (in the case of a PA), if applicable, to decide upon the appropriate course of action. In the event of withdrawal from the MOU or its PAs, the following rules apply:

20.6.1. The withdrawing Participant will continue participation, financial or otherwise, up to the effective date of withdrawal from the MOU or PA, as applicable.

20.6.2. Except as to Contracts awarded on behalf of the PA Participants under a PA, each PA Participant will be responsible for its own project-related costs associated with withdrawal of a PA Participant. For Contracts awarded on behalf of other PA Participants under a PA, the withdrawing PA Participant will pay all Contract modification or termination costs that would not otherwise have been incurred but for the decision to withdraw; in no event, however, will a withdrawing PA Participant's total financial and non-financial contribution, including Contract termination costs, exceed that PA Participant's

financial and non-financial contributions as established the PA.

20.6.3. All Information, Project Information, and rights therein received under the provisions of this MOU or its PAs prior to the withdrawal of a Participant will be retained by the MOU Participants or PA Participants, as applicable, subject to the provisions of this MOU and any applicable PAs.

20.6.4. Each PA Participant will make available to the other PA Participants all Foreground Information generated and delivered prior to withdrawal, and which has not been provided to the other PA Participants prior to the withdrawal.

20.7. The respective benefits and responsibilities of the Participants regarding Section 8 (Project Equipment), Section 9 (Disclosure and Use of Information), Section 10 (Controlled Unclassified Information), Section 12 (Security), Section 13 (Third Party Sales and Transfers), and Section 14 (Liability and Claims), Section 19 (General Provisions), and this Section 20 (Amendment, Termination, Entry into Effect, and Duration) will continue to apply notwithstanding termination or expiration of this MOU or its PAs or a withdrawal of a Participant from this MOU or its PAs.

20.8. This MOU, which consists of twenty (20) Sections and one (1) Annex, will come into effect upon signature by at least two Participants and will remain in effect for ten (10) years. For each subsequent Participant, that Participant will have no rights or responsibilities under this MOU, and the other signatory Participants will have no responsibilities in regard to that Participant, until such time as that Participant has signed this MOU. The MOU may be extended by mutual written consent of the Participants. In the event that all seven (7) of the MOU Participants have not signed this MOU within one hundred and eighty (180) days after it comes into effect, the signatory MOU Participants will immediately consult in order to negotiate the necessary amendments to this MOU.

The foregoing represents the understandings reached among the Participants on the matters referred to herein.

Signed by the authorized representatives of the Participants:

FOR THE DEPARTMENT OF DEFENCE
OF AUSTRALIA

Signature

Name

Title

Date

Location

FOR THE DEPARTMENT OF NATIONAL
DEFENCE OF CANADA

Signature

Name

Title

Date

Location

FOR THE MINISTRY OF DEFENSE OF
THE REPUBLIC OF FINLAND

Signature

Name

Title

Date

Location

FOR THE MINISTRY OF DEFENSE OF
THE STATE OF KUWAIT

Signature

Name

Title

Date

Location

FOR THE MINISTRY OF DEFENSE OF
THE KINGDOM OF SPAIN

Signature

Name

Title

Date

Location

FOR THE FEDERAL DEPARTMENT OF
DEFENSE, CIVIL PROTECTION AND
SPORTS OF THE SWISS
CONFEDERATION

Signature

Name

Title

Date

Location

FOR THE MINISTRY OF DEFENSE OF
THE REPUBLIC OF FINLAND

Pekka Tuunanen
Signature

Brigadier General Pekka Tuunanen
Name

Chief of Staff, FiAF HQ
Title

23.9.2005
Date

Tikkakoski, Finland
Location

FOR THE MINISTRY OF DEFENSE OF
THE STATE OF KUWAIT

Signature

Name

Title

Date

Location

FOR THE MINISTRY OF DEFENSE OF
THE KINGDOM OF SPAIN

Signature

Name

Title

Date

Location

FOR THE FEDERAL DEPARTMENT OF
DEFENSE, CIVIL PROTECTION AND
SPORTS OF THE SWISS
CONFEDERATION

Signature

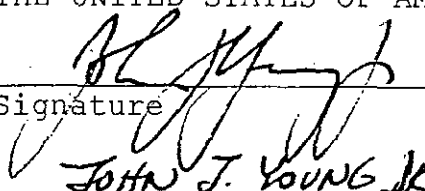
Name

Title

Date

Location

FOR THE DEPARTMENT OF DEFENSE OF
THE UNITED STATES OF AMERICA


Signature

Name

JOHN J. YOUNG JR.
ASN(RDA)

Title

23 AUG 2005
Date

Location

ANNEX A

SAMPLE PROJECT ARRANGEMENT

PROJECT ARRANGEMENT

UNDER

THE MEMORANDUM OF UNDERSTANDING

CONCERNING THE COOPERATIVE FRAMEWORK FOR THE F/A-18 PROGRAM

DATED [insert date of MOU]

PROJECT ARRANGEMENT NO. _____

AMONG [OR BETWEEN] THE [List Titles of PA Participants]

CONCERNING

[Insert Title of Project]
